

DECISION



119202
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-207055

DATE: August 16, 1982

MATTER OF: Datagraphix, Inc.

DIGEST:

1. Army was not required to synopsise order for 6 months' rental of computer equipment in Commerce Business Daily because applicable dollar thresholds established by procurement regulations for synopsis were not exceeded given dollar value of order.
2. Army agrees that where informal purchase contacts are made with Federal Supply Schedule contractors in future, contracting office should, unlike circumstances in protested procurement, inform contractors of complete description of Government's requirements even if price for requirements may be obtained from schedule. Nevertheless, protester was not prejudiced by lack of Army statement that purchased equipment needed "real-time" clock. Moreover, protester has not shown Army did not reasonably need clock.

Datagraphix, Inc. (Datagraphix), protests the award of an Army delivery order to NCR Corporation (NCR) for the provision of a "minicomputer system and its peripheral equipment" to be used at Fort Meade, Maryland. The delivery order was issued under authority of NCR's General Services Administration (GSA) Automatic Data Processing Equipment (ADPE) supply schedule contract No. GS-00C-02802 and provides for an initial 6-month rental period from April 1 to September 30, 1982, "under [a] 5 year lease/purchase option." We understand, however, that the Army did not contemplate the possibility of a 5-year lease denominated as such. The quoted phrase was used merely to denote the possibility of the Army's issuance of separate delivery orders, to be funded by fiscal year funds, to the company under the authority of successive fiscal year schedule contracts which NCR may obtain for the equipment.

We deny the protest.

Fort Meade determined it needed the system in February 1982. NCR and Datagraphix were the only two sources that offered the required configurations, and both companies were available from the current GSA multiple-award schedule for this equipment. Upon evaluation, the contracting officer at Fort Meade determined that the system offered by NCR was the "better offer for the mini-com configuration." During this technical evaluation, the Army found that, unlike NCR's system, the protester's system lacked a "real-time clock as a standard feature," although it was available from the protester as an optional feature. This feature had not been revealed as an Army need to either company. Nevertheless, the contracting officer decided "it was unnecessary to furnish this information to the two companies as the price [\$113 per month] for [the protester's clock] was available from the GSA schedule." Based on this pricing approach, NCR's system was found to be \$33 per month lower than the protester's price, which included an approximate 10-percent, "one-time" reduction from its schedule price for the basic system.

On March 29, 1982, the Contracting Division placed the delivery order with NCR for the 6-month period involved for a total cost of \$19,568, including maintenance and software. The delivery order states that it will "automatically terminate" as of September 30, 1982, "unless otherwise renewed." By letter of April 1, 1982, Datagraphix filed a protest with our Office.

First, Datagraphix alleges that Fort Meade did not comply with the relevant synopsis requirements as set forth in the Federal Procurement Regulations (FPR) and the Defense Acquisition Regulation (DAR). Under FPR § 1-4.1109-6(b)(3) (1964 ed., amend. 211), synopsis of a proposed procurement in the Commerce Business Daily (CBD) is required when an agency intends to place an order "valued" in excess of \$50,000 against an ADPE schedule contract. DAR § 4-1104.6(a) (Defense Acquisition Circular # 76-27, May 15, 1981) requires publication of proposed contracts for ADPE when "requirements" to be ordered from a schedule contract exceed \$35,000.

The protester suggests the threshold is exceeded because the purchase option price (or the aggregate possible rental cost for 5 years) for the equipment admittedly exceeds either threshold figure. The literal wording of the cited

regulations, however, does not support the protester's position since the dollar threshold is to apply only to an "order" for ADPE "requirements." The only "order" issued here is for 6 months' rental at a price which is well below either threshold. Thus, there was no requirement for the contracting officer to have synopsisized the protested procurement in the CBD.

Next, the protester questions both the need for the "real-time" clock and the Army's decision not to inform the company of this need prior to the award of the delivery order for this requirement. Specifically, the protester states "that in today's economic climate [it] might have considered" the submission of a discount from its schedule price for the clock in the same manner that it proposed a discount for its basic system.

Our Office has consistently held that the contracting agencies are responsible for determining their needs and the methods of best accommodating them. See Manufacturing Data Systems Incorporated, B-180608, June 28, 1974, 74-1 CPD 342. Our Office will not disturb an agency's determination of its needs unless the determination is clearly shown to be unreasonable. See Security Assistance Forces & Equipment International, B-199757, November 19, 1980, 80-2 CPD 383.

The contracting officer is of the view that the clock is an essential performance feature. Without the clock, according to the contracting officer, data-gathering must be performed manually--a "time-consuming and expensive" process. From the record before us, Datagraphix has not shown that the Government's need for the clock is clearly unreasonable.

As to the communication of the need for the clock, we agree with the Army that:

"* * * where informal contacts with prospective contractors are made in the future, which anticipate further information being provided * * * regarding a proposed purchase, * * * the contracting activity [should] insure that the firms are provided a complete statement of the Government's requirements * * *."

Nevertheless, the protester does not definitely state--even "after-the-fact"--that it would have offered a discount on the price of its optional clock had it been informed of this need. Moreover, even if the protester had offered a 10-percent discount (similar in percentage terms to the discount it proposed for the basic system) from its schedule price for the clock, its submission would still have been approximately \$30 higher than NCR's comparable informal quotation. In these circumstances, we agree with the Army's further recommendation that the "award of the delivery order to NCR [need] not be disturbed."

The protest is denied.

for Milton J. Forster
Comptroller General
of the United States